Filed 11/15/10 In re Mark G. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re MARK G., a Person Coming Under the Juvenile Court Law.	B220239 (Los Angeles County Super. Ct. No. FJ45699)
THE PEOPLE, Plaintiff and Respondent, v. MARK G., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Shep Zebberman, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr., and Eric E. Reynolds, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court sustained a petition filed under Welfare and Institutions Code section 602 for felony vandalism. On appeal, the minor, Mark G., contends, first, that there was insufficient evidence to establish vandalism and, second, that there was insufficient evidence to establish that the damage exceeded $400, which rendered the crime a felony. We find that there was sufficient evidence to establish felony vandalism and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

George Yu was the Executive Director of the Chinatown Business Improvement District. Part of his responsibilities as executive director was to document tagging in the area and to clean it up. Either late on April 20, 2009 or in the early morning of April 21, Yu was alerted to the existence of graffiti on an overpass in Chinatown. At about noon on April 21, Yu took photographs of the overpass. He had a contractor paint over the graffiti that same day. It cost over $1,000 to clean the overpass, but it was substantially more than $400. To verify that the graffiti had been cleaned up, Yu went back to the overpass that same day in the early evening and confirmed that the contractor had painted over the graffiti. The overpass remained graffiti-free for the next two weeks.

Melvin McKenzie used that same overpass in Chinatown every day. The same day that Yu had the overpass cleaned of graffiti, April 21, 2009, McKenzie crossed the overpass at about 6:00 p.m. McKenzie saw Mark G. sitting. McKenzie and Mark G. were neighbors. About six feet from Mark G. was another man, who was spray painting the overpass. McKenzie yelled, " 'Hey, what are you doing?' " and the man stopped. McKenzie could not recall what was written on the bridge, but he did notice at the time that something on the bridge looked fresh. When shown a picture of the bridge, McKenzie said that the colors of the graffiti were the same as the ones he recalled that night. He did not see Mark G. spraying anything on the bridge that day.

About two weeks later, however, McKenzie told Detective Mark Campbell that Mark G. *was* the spray painter. The detective then searched Mark G.'s apartment.

Mark G.'s mother directed the detective to Mark G.'s bedroom, where he found a backpack with graffiti (213 and Drops) on it matching the graffiti on the overpass and slap tags, which are decals or stickers that have graffiti on them; slap tags can be peeled off and stuck onto surfaces. "213" refers to a tagging crew. The detective also found a black hooded sweatshirt smeared with paint in Mark G.'s room. Detective Campbell also searched another bedroom and found a metal tool box with Fogsk on it. Outside the apartment building where Mark G. lived, a trash dumpster had 213, Rowdy and Fogsk, among other things, written on it in white dye or white shoe polish. The detective also believed that Fogsk was on a traffic barricade near the dumpster and on a handrail leading into the front of the apartment building. Detective Campbell believed that Fogsk referred to Mark G.

II. Procedural background.

On July 6, 2009, a petition under Welfare and Institutions Code section 602 was filed alleging counts 1 through 12 for vandalism over $400 (Welf. & Inst. Code, § 602; Pen. Code, § 594, subd. (a)). The juvenile court dismissed all counts, except count 12, which the court sustained on October 22, 2009, finding that the vandalism was a felony. On November 2, 2009, the juvenile court declared Mark G. a ward of the court and placed in camp, setting the maximum term of confinement at three years, four months.[1]

DISCUSSION

I. Sufficiency of the evidence to support felony vandalism.

Mark G. contends that there was insufficient evidence from which a reasonable trier of fact could conclude that he committed vandalism and that any damage he caused exceeded $400, which is required for a felony vandalism conviction. (Pen. Code, § 594, subd. (b)(1).)

[1] Before Mark G. was sentenced for the felony vandalism, a second petition was filed on November 2, 2009 alleging attempted second degree burglary of a vehicle (Pen. Code, §§ 459, 664). Mark G. admitted the attempted second degree burglary.

The same standard of appellate review applicable to reviewing the sufficiency of the evidence to support a criminal conviction applies to considering the sufficiency of the evidence in a juvenile proceeding. (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605; *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) The critical inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) We " 'review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*Ryan*, at p. 1371.)

Under Penal Code section 594, subdivision (a)(1), every person who maliciously defaces any real or personal property not his or her own with graffiti or other inscribed material, in cases other than those specified by state law, is guilty of vandalism. (See also *In re Leanna W.* (2004) 120 Cal.App.4th 735, 743.) Here, Mark G. bases his argument that there was insufficient evidence to show he vandalized the overpass on inconsistencies between McKenzie's testimony and Detective Campbell's testimony and on Yu's testimony about when the overpass was cleaned of graffiti. At trial, McKenzie testified that Mark G. was not the one spray painting the overpass. But Detective Campbell testified that McKenzie told him, during an interview conducted about two weeks after the incident, that in fact it was Mark G. who spray painted the overpass. Yu added to the uncertainty by saying that he went to the overpass that evening, around the time McKenzie said he saw the spray painting, and all graffiti had been cleaned and, moreover, the overpass remained graffiti-free for two weeks.

Although these were certainly weaknesses in the prosecution's case, they were not fatal ones for the purpose of sufficiency of the evidence review. Although McKenzie denied at trial that Mark G. spray painted the overpass, Detective Campbell at trial said that McKenzie admitted that it was Mark G. who painted the graffiti. There are multiple explanations for the inconsistency, but the juvenile court, sitting as the trier of fact and

having the benefit of seeing the witnesses testify, was entitled to believe the detective. "[W]e must be ever mindful of the fact that it is the exclusive province of the trier of fact to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*In re Ryan N. supra,* 92 Cal.App.4th at p. 1372.) " 'It is blackletter law that any conflict or contradiction in the evidence, or any inconsistency in the testimony of witnesses must be resolved by the trier of fact who is the sole judge of the credibility of the witnesses. It is well settled in California that one witness, if believed by the jury, is sufficient to sustain a verdict. To warrant the rejection by a reviewing court of statements given by a witness who has been believed by the trial court or the jury, there must exist either a physical impossibility that they are true, or it must be such as to shock the moral sense of the court; it must be inherently improbable and such inherent improbability must plainly appear.' " (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1258-1259.)

Nor did Yu's testimony render either the fact of the vandalism or Mark G.'s part in it an impossibility. Yu said that he photographed the graffiti on the overpass around noon on April 21, 2009; contacted a contractor to have it cleaned up; and then returned to the overpass during the early evening, by which time the graffiti was gone. The overpass remained graffiti-free for two weeks. McKenzie testified, however, that he saw the overpass being spray painted around 6:00 p.m. on April 21. This suggests, or gives rise to the reasonable inference, that someone, McKenzie or Yu, was incorrect about their dates and/or time. It does not compel the conclusion that Mark G. did not commit the vandalism at issue. Indeed, other evidence showed that he did. Tagging-related materials were discovered in Mark G.'s room: a sweatshirt with paint on the arms, slap tags, and a backpack with 213 and Drops on it in a style of graffiti similar to that on the overpass.

Next, Mark G. contends that there was insufficient evidence to support finding that the damage to the overpass cost more than $400 to fix. If damage due to vandalism is $400 or more, then the crime is a felony; but if it is less than $400, then it is a misdemeanor. (Pen. Code, § 594, subd. (b)(1).) The person in charge of graffiti cleanup in Chinatown, Yu, testified that the cleanup cost was "substantially more" than $400. Yu took photographs of the graffiti, hired the contractors to clean it up, and documented its removal. This was more than sufficient to establish that the damage to the overpass was $400 or more, making the offense a felony rather than a misdemeanor.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.